1966

# Crown Roofing and Engineering Company, dba Roofer's Supply Company v. Stanley D. Robinson, et al : Appellant's Brief

# IN THE SUPREME COURT OF THE STATE OF UTAH

CROWN ROOFING AND ENGINEERING COMPANY, dba ROOFERS SUPPLY COMPANY, *Plaintiff and Appellant,*

vs.

STANLEY D. ROBINSON, dba RELIABLE ROOFING COMPANY, et al., *Defendants and Respondents,*

OLYMPIC CONSTRUCTION COMPANY, INC., *Intervenor.*

Case No. 10723

## APPELLANTS' BRIEF

**Honorable Joseph G. Jeppson, District Judge**


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### STATEMENT OF THE KIND OF CASE

This is an action by a materialman brought under the provisions of 14-2-2 of the Utah Code Annotated 1953, against the owners because of the failure of the owners to obtain a bond from their contractor.

## DISPOSITION IN THE LOWER COURT

The case was tried without a jury on the 22nd day of June, 1966, and the court found that the statute of limitations applicable to the statute was one year and that the supplier was barred by the statute of limitations as to all of the owners but one and that it failed to qualify itself as a materialman under the statute as to the one.

## RELIEF SOUGHT ON APPEAL

Plaintiff seeks a reversal of the judgment and an order remanding the case back for re-trial.

## STATEMENT OF FACTS

The action was brought by the plaintiff against the defendant Stanley D. Robinson, the sub-contractor who became bankrupt and some twenty-five owners of homes built by the Olympic Construction Company, for the reasonable value of roofing materials furnished by the plaintiff between January and October, 1964. The Olympic Construction Company intervened and offered to accept liability for the respective owners. All of the essential elements under 14-2-2 of the statute were admitted except the qualification of the plaintiff as a materialman and the reasonable value of the materials.

The court found that the one year statute of limitations barred all of the actions except one, paragraph

23, and as to that one that the plaintiff did not furnish materials under the contract, (Tr. 113). Or, as set out in paragraphs 1 and 2 of the conclusions of law on page 105 of the record, the plaintiffs claim against all of the defendants except Youngberg is barred by reason of the one-year statute of limitations found at 78-12-29(2), Utah Code Annotated, 1953, and that with respect to the built up roofs, of which Youngberg was one, the plaintiff was not a materialman furnishing material under the contract as contemplated by Title 14, Chapter 2, Utah Code Annotated, 1953. Four of the homes were shingled and the others were gravel, or built up roofs.

## ARGUMENT

### POINT I.

### THE COURT ERRED IN APPLYING THE ONE YEAR STATUTE.

This is an action created by statute. The three year limitation found at 78-12-26 (4), Utah Code Annotated, 1953, should have been applied. If the intention of the legislature had been otherwise there would have been no need for the 1965 legislature to have amended the statute so as to give it a present one year limitation.

The one year statute, as provided in 78-12-29 (2) applies only when there is a penalty or forfeiture, which is not the case here.

The remedy given by 14-2-2 is purely compensatory, and is considered by the authorities to be a liability created by statute and not a fine or a penalty.

23 A. J. at page 625, paragraph 29:

> "A statutory obligation to pay damages which the common law does not give is a liability created by statute, and not a penalty, where the damages awarded are strictly compensatory."

The decision in the case of John H. Slater v. Atchison Topeka and Santa Fe Fy. Co., 137 P 943, discusses the question quite fully citing many cases and holds that the three year statute should apply. At page 953:

> "The trial court held this action barred by the one year statute. The judgment was reversed, and it was held that the action was upon 'a liability created by statute' and not an action for a penalty or forfeiture."

The case of Huntington v. Attrill, 146 U. S. 657, makes the following distinction:

> "The question whether a statute of one state, which in some respects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offense against the public policy of the state, or to afford a private remedy to a person injured by the wrongful act."

The remedy provided by 14-2-2 of the Utah Code is purely compensatory. It is in no sense a "forfeiture or penalty." The three year statute should apply.

## POINT II.

## PLAINTIFF WAS A MATERIALMAN FURNISHING MATERIALS UNDER THE CONTRACT.

The court erred in finding that the plaintiff was not a materialman furnishing materials under the contract on the built up roofs.

The evidence shows by a great preponderance that the plaintiff furnished all of the felt used on the built up roofs.

The testimony of Charles Robinson taken from page 55 of the transcript, commencing with line 24, is as follows:

> "I have checked with Stanley Robinson many times, and I know that his felts were purchased at my place of business."

and from page 56, line 26:

> "At the time Mr. Robinson took this contract on, and entered into the contract, he came to me to purchase the material, and he agreed that he would buy all his material from me, if I would go along on the job.
>
> Question: Did you do that? Answer: Yes."

The plaintiff offered to make the proof positive that no felt was purchased for the built up roofs on these houses from any other source and was refused (Tr. 113, line 1).

## CONCLUSION

The court erred in applying the one year statute of limitations and in finding that the plaintiff did not furnish materials on the built up roofs under the contract. The case should be remanded for a new trial.

Respectfully submitted,

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